Sogard Tool Company and Adell Corporation *and* United Electrical, Radio and Machine Workers of America (UE), Local 274. Case 1–CA–23967

24 September 1987

DECISION AND ORDER

BY MEMBERS BABSON, STEPHENS, AND CRACRAFT

On 30 January 1987 Administrative Law Judge Arline Pacht issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, to modify the remedy,[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Sogard Tool Company and Adell Corporation, Orange, Massachusetts, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Offer Connie Matthews and Dennis Lafrancois immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision."

2. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs.

"(b) Remove from its files any reference to the unlawful layoffs and refusals to recall Matthews and Lafrancois and notify the employees in writing that this has been done and that these actions will not be used against them in any way."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT lay off or fail to recall our employees because of their support for, or membership in, the United Electrical, Radio and Machine Workers of America (UE), Local 274, or any other labor organization.

WE WILL NOT make any statements to employees which coerce, restrain, or interfere with their exercise of rights guaranteed by Section 7 of the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

[1] The Respondent has excepted to some of the judge's credibility findings The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F 2d 362 (3d Cir 1951). We have carefully examined the record and find no basis for reversing the findings

In adopting the judge's decision, we do not rely on her finding that the attendance records of BRS employee Beverly Holdan and Sogard Tool employee Nicole Johnson were comparably worse than those of discriminatees Matthews and Lafrancois The Respondent's president and treasurer, Thomas Sogard, uncontrovertedly testified that both Holdan and Johnson had good attendance records given the nature of their jobs. At the time of the layoffs, Holdan was a part-time employee who scheduled her own work hours, while Johnson was a student and a part-time employee We agree, however, with the judge's finding that Sogard Tool employee Elmer Webster was absent 30-1/2 days between 28 March and 21 December 1985 Thus his attendance record, when compared with the records of Matthews and Lafrancois, is evidence of disparate treatment supporting the judge's finding that the layoffs were for pretextual reasons

In Member Babson and Member Stephens' view, regardless of the applicability of the small-plant doctrine relied on by the judge, the evidence here, including the Respondent's knowledge of general union activity, its demonstrated animus, the timing of the layoffs, and the pretextual reasons given by the Respondent, was sufficient to establish a prima facie case against the Respondent with respect to the layoffs of employees Matthews and Lafrancois *BMD Sportswear Corp*, 283 NLRB 142 (1987) Accord *NLRB v Long Island Airport Limousine Service Corp.*, 468 F 2d 292, 295–296 (2d Cir 1972)

[2] In accordance with our decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), interest on and after 1 January 1987 shall be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C § 6621. Interest on amounts accrued prior to 1 January 1987 (the effective date of the 1986 amendment to 26 U S C § 6621) shall be computed in accordance with *Florida Steel Corp*, 231 NLRB 651 (1977)

[3] We shall modify the judge's recommended Order to conform her reinstatement language to that customarily used by the Board.

We will offer to Dennis Lafrancois and Connie Matthews immediate and full reinstatement to their former positions or, if they no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from our discrimination against them, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to their layoffs and our failure to recall them and that these actions will not be used against them in any way.

SOGARD TOOL COMPANY AND ADELL CORPORATION

Benjamin Smith, Esq., for the General Counsel.
Duane Sargisson, Esq. (Bowditch & Dewey), of Worcester, Massachusetts, for the Respondent.

DECISION

ARLINE PACHT, Administrative Law Judge. Based on an unfair labor practice charge filed by United Electrical, Radio and Machine Workers of America (UE) Local 274 (the Union) on 19 June 1986, a complaint issued on 12 August 1986, alleging that the Respondents were a single employer and had violated Section 8(a)(1) and (3) of the Act by discharging two employees because of their protected concerted activity and by making a coercive statement. The Respondents filed timely answers denying their single-employer status and the commission of th alleged unfair labor practices.

At the hearing in this case, held on 29 and 30 October 1986 in Greenfield, Massachusetts, all parties were afforded full opportunity to participate. On the entire record,[1] from my observation of the demeanor of the witnesses and with careful consideration of the posttrial briefs submitted by counsel for the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges and the answers admit that Respondents Sogard Tool and Adell are corporations with offices and places of business in Orange, Massachusetts. At all material times, Sogard has manufactured and sold handtools while Adell has operated a metal stamping facility. During the calendar year ending 31 December 1985, in the course and conduct of their business operations, Respondents Sogard Tool and Adell each sold and shipped from their Orange, Massachusetts facilities goods and materials valued in excess of $50,000 directly to points outside the Commonwealth. Accordingly, the complaint alleges, the Respondents admit, and I find that Sogard Tool Company and Adell Corporation are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act).

The Union is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. THE RELATIONSHIP BETWEEN RESPONDENTS

Although Respondents Sogard and Adell are separately incorporated, both are wholly owned by a sole stockholder, Thomas Sogard. Sogard, the president and treasurer of Sogard Tool and Adell, was responsible for major policy decisions for both enterprises, including those affecting labor management. Sogard's son, Bruce, was a corporate officer of each Respondent and also served as general manager of Sogard Tool. He had authority for day-to-day management of the Companies, aided by Sogard's general foreman, Robert Britt, and Adell's manufacturing manager, Richard Herk. As of December 1985, Sogard Tool, with a complement of 19 employees, produced small hand-held tools such as planes, drills, awls, and garden hose equipment. Adell, employing approximately 39 workers, was housed in a facility directly across the street from Sogard. The record shows that Adell supervisors regularly visited the Sogard facility to collect equipment and parts, for the Companies shared a common toolroom. Further, employees from Sogard frequently were loaned to Adell for brief periods of time as production needs dictated.

At the hearing, evidence was adduced about a third-related business, BRS, which was lodged in a portion of the Sogard Tool facility and was owned and managed by Bruce Sogard until April 1986.[2] In that month, the younger Sogard left the family business and his father assumed control.[3] With three to four employees working under Robert Britt's supervision, BRS producted metal containers. BRS personnel, too, were transferred to Sogard Tool and Adell from time to time.

[1] During the hearing, Respondent offered into evidence R. Exhs. 5 (a)–(f), listing Sogard employees from 12/21/85 to 10/24/86 I reserved ruling on this exhibit until Respondent furnished similar rosters for Adell and BRS By cover letter of 13 January 1986, the General Counsel and Respondent filed a joint motion to admit documents in accordance with my ruling. As Respondent explained in a separate cover letter, its exhibit was properly marked R. Exh 5 (pp 1–12), supplementing R Exhs 5(a)–(f) Other copies of the supplemental that were incorrectly marked as R Exhs 6 and 7 and included in the exhibit file should be disregarded To make it abundantly clear, R Exhs. 5 (a)–(f) (Sogard employees) and R Sup. Exh 5 (1–12) (Adell and BRS employees) are admitted into evidence.

The parties also forwarded R Exhs 6(b) and 7 (attendance calendars for Connie Matthews and Dennis Lafrancois respectively), and G C Exh. 11 through 16 (employee timecards), which were admitted into evidence during the hearing but which the reporter inadvertently omitted from the the exhibit file

[2] BRS are the initials of Bruce R Sogard.

[3] Richard Herk then became general manager of both Sogard Tool and Adell.

III. THE LAYOFFS

Thomas Sogard testified that in August 1985, Sogard Tool began to experience a decline in plane orders. As a consequence, a decision was made in late November or early December to lay off several employees. Foreman Britt testified that on Bruce Sogard's instruction, he reviewed a list of all employees to determine who should be selected for layoff. Britt acknowledged that he immediately selected employees Connie Matthews and Dennis Lafrancois for layoff, ostensibly because of their deficient attendance record and gave no consideration to other employees. On Friday afternoon, 20 December, both Sogards, Britt, and Herk met, and concluded that because no positions were available at Adell, Lafrancois and Matthews would have to be laid off the following Monday.

Matthews first was employed by Respondent from 1975 to 1978, but left for a higher paying job. She was rehired by Sogard on 5 November 1984 and worked primarily on the plane line. However, because she demonstrated exceptional mechanical skill, she operated every other machine as well.

In August 1985, Matthews advised Bruce Sogard that she would be resigning for a better position with another firm. He implored her to remain with the Company, offering inducements such as a pay raise, a possible supervisory position, and the right to use equipment at Adell whenever she pleased. Matthews agreed to stay with Respondent and over the next several months received two wage hikes. Although personnel records indicate that she was considered an outstanding and productive employee, absenteeism did become a problem. In the 6 months prior to the layoff, Matthew's timecards show that she was absent 12 full and 10 partial days. In addition, she clocked in late on 13 mornings.[4] Matthews discussed her attendance with Bruce Sogard, explaining that she was confronting marital difficulties. He was sympathetic and when she received a warning notice about her absenteeism, Sogard told her not to worry about it.

Dennis Lafrancois, with 4 years of high school mechanical training, was hired by Respondent Sogard Tool in April 1985. He worked principally as a machine operator on the plane line but he performed every other job in the plant as well.

When Lafrancois received merit wage increases in June and September 1985, he was evaluated as a better than average employee. Shortly after the second raise was awarded at the end of September, Bruce Sogard personally thanked him for his help in winning a new contract.[5] However, Lafrancois' punctuality was not exemplary. Between his date of hire in April and his layoff in December 1985, he was tardy 18 times. Respondent's Exhibit 7 also shows that he missed 3 full and 8 partial days of work during this 8-month timespan.

In early December 1985, Matthews and Lafrancois spoke with coworkers about alleged adverse working conditions including health and safety hazards and management favoritism toward certain employees. Believing that union organization could help to cure the perceived problems, Lafrancois met with UE Business Agent Peter Knowlton on 19 December 1985, obtaining 50 authorization cards from him. On the following day, he and Matthews began distributing the cards to Sogard, BRS, and Adell employees. Although they generally confined their activities to times when their coworkers gathered in the stockroom for breaks or lunch, they engaged in some solicitation on the shop floor. Both employees testified that they attempted to conceal their efforts from management. However, at the start of the workday on 20 December, Matthews spoke with several employees about union membership under circumstances that could have been overheard by Foreman Britt. Thus, BRS employee Rita Jean testified that she and a coworker discussed the Union with Matthews for approximately 15 minutes at the start of the workday. Jean then became aware that Britt was some 15 feet away in the storeroom that had an oversized door opening onto her work area. She approached the storeroom confirming the fact that Britt was there. As soon as she observed Britt, the employees put their cards away hastily and Matthews departed. Britt denied that he was aware of any union activity on this date. However, based on her experience with accoustical conditions in this part of the plant, Jean was convinced that Britt overheard her conversation with Matthews.

Over the weekend, Matthews and Lafrancois continued their organizational efforts, visiting employees at their homes. On the following Monday, 23 December, they again distributed cards to various workers in the Sogard and Adell facilities during worktime, obtaining overall 20 signatures. At the end of the day, when they failed to receive paychecks distributed to all other employees, Lafrancois and Matthews were advised to report to Bruce Sogard's office. There, with Foreman Britt present, Sogard told them that he was compelled to lay them off because plane orders were filled and the line would have to be shut down. This announcement came when Lafrancois was in the middle of filling an order for planes and Matthews was engaged in milling brace sockets. When the employees asked why less senior and more inexperienced people were not let go first, Sogard answered that other employees had been hired for specific jobs and were just as qualified. According to Matthews, Sogard also assured them that their attendance did not cause their layoffs.[6]

The following day, while attending Respondent's Christmas party given for the employees, Lafrancois and Matthews talked to Adell's manufacturing manager, Richard Herk. He asked them what reason had been assigned for their layoffs. In Matthews' opinion, Herk registered surprise when she told him that lack of work was the proffered excuse.[7]

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[4] In calculating Matthews' absenteeism, Respondent submits that she was absent on 13 full days, and 13 partial days and late on 12 occasions These are minor discrepancies that do not affect the outcome

[5] Because Bruce Sogard did not testify, Matthews and Lafrancois' testimony regarding the above conversation with him was uncontroverted

[6] Britt also mentioned that Sogard alluded to their attendance records, but did not state specifically that absenteeism was offered as a reason for their layoffs

[7] Herk was not produced as as witness and, thus, did not dispute Matthew's testimony.

In the early part of January 1986, Matthews, Lafrancois, and UE Agent Knowlton began distributing union handbills to employees as they entered the plants. Shortly after the union campaign became public, Matthews testified that she telephoned Thomas Sogard, and without identifying herself, asked him if it was true, as an employee, Brenda Johnson, was reported to have said that the plant would close if the Union prevailed. Sogard told her that he would speak to Johnson and then added gratuitously, that there would be no problem at the plant for the "cancer had been cured and you can tell the cancer that too." Matthews stated that she related this remark, which she found chilling, to Knowlton, Lefrancois, and several other employees. Sogard acknowledged that he received a number of anonymous calls but denied engaging in any antiunion conversation or making a comment regarding the elimination of a cancer. He also acknowledged that one day after a union leaflet was placed on his desk, he held a meeting with Sogard and Adell employees to discuss the Union's organizational efforts.

Later that month, Matthews delivered a lengthy, handwritten letter to Sogard's home in which she complained about problems at the shop; particularly, Foreman Britt's incompetence and his playing favorites.

Over the next several months both Matthews and Lafrancois telephoned the plant to register their desire for reinstatement. Lafrancois called twice and on each occasion Bruce Sogard told him no work was available. Matthews called once and left a message with a secretary that she too was available for recall. Although Respondents and BRS hired a number of employees between 23 December and the date of the instant hearing, Matthews and Lafrancois were never reemployed.

IV. CONCLUDING FINDINGS

A. *The Respondents are a Single Employer*

A threshold question in this case concerns the legal relationship under the Act of Sogard Tool, Adell Corporation, and BRS. In determining whether multiple businesses may be treated as a single enterprise, the Board considers four factors: (1) integration of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control.[8] Although all four factors need not be present, labor relations is regarded as a far more significant determinant than is common ownership.[9]

Under these criteria, sufficient evidence was adduced in this case to support a finding that the three business entities constitute a single employer.[10] Thomas Sogard readily acknowleged that he owned and controlled Respondents while his son was an officer of and ran all three businesses on a day-to-day basis. It is true that each Company produced a different product. However, this factor does not overcome other evidence that shows an appreciable interrelationship among the three enterprises. Thus, employees in BRS and Sogard worked under the same foreman; they were routinely and frequently transferred to Adell as need dictated. Sogard and BRS operated in the same quarters; Adell was nearby. They also shared a common toolroom and utilized some of the same equipment.

The record provides other evidence indicating that the employees were treated as related members of a unified complex. Thus, Sogard testified that before employees were laid off, job availability was examined throughout the three Companies. The Respondents sponsored one Christmas party for all employees and held a joint meeting to counteract the union campaign. Thus, the evidence collectively demonstrates that the three businesses did not act autonomously or at arm's length. See *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979). Accordingly, I conclude that Respondents Sogard Tool and Adell, together with BRS, constitute a single employer within the meaning of the Act.

B. *The Layoffs were Unlawful*

Where, as here, an employer offers ostensibly legitimate reasons for laying off employees, the General Counsel must establish a prima facie case that the Respondent acted out of antiunion animus with knowledge of the employees' protected activity. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 395 (1983), citing with approval *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

In the present case, direct evidence that the Respondent was aware of Matthews' and Lafrancois' activity is far from abundant. The Respondent's key witnesses, Thomas Sogard and Robert Britt, denied any such knowledge and the employees involved candidly admitted that they were discrete in their union campaigning efforts. However, even where direct evidence is lacking, employer knowledge may be inferred under the Board's small-plant doctrine that "rests on the view that an employer at a small facility is likely to notice union activities at the plant because of the closer working environment between management and labor." *NLRB v. Health Care Logistics*, 784 F.2d 232, 236 (6th Cir. 1986), quoting *Alumbaugh Coal Corp. v. NLRB*, 635 F.2d 1380, 1384 (8th Cir. 1980). Based on th circumstances present here, I am persuaded that the small-plant doctrine should be applied.

In December 1985 when the union drive was underway, Sogard Tool employed no more than 19 employees who worked on a single shift within the confines of a facility whose interior space permitted employees to see one another. There were 3 or 4 BRS employees who worked in an upstairs portion of the Sogard facility while the 39 or 40 Adell employees were located in a building close by. Although Lafrancois and Matthews attempted to conceal their activities, they did distribute union cards, solicit signatures, and engage in prounion discussions during working hours on the plant premises.

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[8] *Radio Union Local 1264 v. Broadcast Service*, 380 U S 255, 256 (1965)

[9] *Bryar Construction Co*, 240 NLRB 102, 104 (1979)

[10] BRS was not named as a Respondent, nor was it necessary to do so because jurisdiction was established on the basis of Sogard Tool's and Adell's commercial transactions. The relationship of BRS to its sister companies is relevant in assessing Respondent's defense that business conditions compelled the layoffs and the failure to recall the affected employees

With utter candor, they admitted that they were unaware of any management surveillance; but this does not necessarily mean that management was in the dark. BRS employee Jean was convinced that Britt had to have heard her conversation with Matthews at the start of the workday on 20 December.[11] Because Jean was unaware that Britt was in the storeroom, he must have entered that area and been there throughout the time she spoke with Matthews. With the machines silent, and no apparent noise coming from the storeroom to signal Britt's presence during her exchange with Matthews, it is likely that he overheard at least some of the employees' remarks. Further, Britt's office was adjacent to an area where employees gathered for breaks or lunch. Britt denied knowledge of Matthews' and Lafrancois' union involvement prior to their layoffs, but I am not convinced by his disclaimer, for other aspects of his testimony were contradictory and unconvincing. For example, Britt alleged that he reviewed a list of the entire work force in determining whom to lay off. Yet, in direct contradiction of this testimony, he admitted on cross-examination that he selected Lafrancois and Matthews immediately without considering other employees whose absenteeism was worse than theirs. For example, the record establishes that Sogard machine operator Elmer Webster missed 30-1/2 days between 28 March and 21 December 1985; BRS employee Holdan apparently worked at will, being absent 91 days in 1985; Nicole Johnson's attendance was spotty yet she was converted from part-time to full-time employment in June 1985. Another woman was out for extended periods due to illness. Regardless of the reasons that these employees gave for their absences, valid or otherwise, Respondent could not depend on them working anymore regularly than did Lafrancois and Matthews.

Other circumstances strengthen the inference that Lafrancois and Matthews were laid off with knowledge and because of their protected activity. The timing of their layoffs is particularly suspicious. Sogard testified that he observed a business decline as early as August 1985. Britt added that the decision to reduce the work force was made in late November. Yet, given all that lead time, Respondent waited to implement its decision until the latter part of December, an admittedly inappropriate time, but just a few days after Matthews and Lafrancios began their organizational efforts. It is difficult to attribute the timing of the layoffs to mere coincidence, especially when both employees were occupied with work and had experience with a variety of equipment and Matthews was considered an especially valuable machinist whose skills could be used anywhere in the shop. Moreover, Respondent's records show that another employee, Robert Howe, voluntarily quit Sogard's employ on 20 December. If, as Respondent maintains, a decision to reduce its work force by laying off several employees was made in early December, Howe's resignation should have allowed Respondent to lay off only one other person. Respondent failed to explain why, after Howe's departure, it still needed to reduce its staff by two. Respondent claimed that in selecting employees for layoff, production and quality, attendance and reliability, and seniority were considered. Apart from the matter of the attendance records, which will be discussed further below, laying off experienced and senior employees rather than newer, less competent workers did not meet two of these criteria. In short, the layoffs of Matthews and Lafrancois do not appear to be a decision prompted by sound business reasons.

Evidence that the Respondent was motivated by antiunion sentiment also stems from Sogard's telephone comments to Matthews regarding ridding the plant of a cancer.[12] Despite Sogard's denial of this conversation, I am persuaded that Matthews testified truthfully about the telephone call. She admitted that she did not identify herself and Sogard acknowledged that he did receive anonymous telephone calls. Moreover, Matthews named the alleged rumor mongerer. That employee appeared in this proceeding and admitted that she indeed had spoken to another employee about the plant closing, thereby confirming some of the details that Matthews described. Futher, Sogard appeared to be uncomfortable and eager to move on to other topics when questioned about this matter. These factors suggest that he did comment that the cancer was cured. In context, this remark has meaning only with reference to the employees' union activity. As such, it reveals hostility toward the Union and constitutes an independent violation of Section 8(a)(1) of the Act.

Taking the small-plant doctrine together with other evidence supporting an inference of Respondent's knowledge and antiunion motivation, it is fair to conclude that the General Counsel has met her burden in establishing a prima facie case that Dennis Lafrancois and Connie Matthews were laid off for discriminatory reasons.

Under the burden-shifting standard approved in *Transportation Management*, supra at 401–402, an employer may escape liability by proving that its actions occurred for legitimate business reasons regardless of antiunion sentiment. Here, the Respondent claims that even if it had knowledge of Lafrancois' and Matthews' union involvement, it would have taken the same action, for declining plane orders made a work force reduction mandatory. Matthews and Lafrancois presented themselves as prime candidates for that reduction because of their poor attendance records. Respondent further contends that they were not recalled because Sogard's plane business remained depressed and Foreman Britt did not consider them reliable prospects for reemployment.

Respondent's records establish that the production of planes diminished between January 1985 and September 1986. However, Respondent adduced no evidence to show that the sale of other Sogard Tool products such as awls, braces, drills, bevils, dividers, mitre boxes, or garden sprinklers was affected similarly. If Respondent's business fortunes were on the decline since August as it contends, it is difficult to understand why two admitted-

[11] Matthews did not refer to this incident However, I am persuaded that Jean, who testified forthrightly and with conviction, honestly described the circumstances leading to her detecting Britt's presence.

[12] This incident does not bear on Respondent's prior knowledge of the employees' union activity. Rather, it is relevant evidence of antiunion animus

ly inexperienced employees were hired in September and November 1985. Britt considered neither of these new employees for layoff in December. In an attempt to justify the selection of Lafrancois and Matthews for layoff in preference to recent hires, Sogard explained that with plane sales reduced plane operators would be those targeted for layoff. However, Lafrancois and Matthews testified without controversion that they were not assigned exclusively to plane production, but rather were routinely transferred from one job to another and had no fixed work assignment. Further, Sogard admitted that job availability was examined throughout the three facilities before employees were laid off. These factors suggest that Respondent did not necessarily select persons assigned to particular tasks for layoff when business was slow on a given production line. Sogard also indicated that because Adell planned a layoff shortly, no jobs were available there. However, the record shows that Adell laid off no employees until the end of February; rather, Adell added one part-time and two full-time employees in early 1985.

Respondent Sogard's work force did decline from 19 to 11 employees between December 1985 and the time of the instant proceeding. This fact fails to explain, however, why Lafrancois and Matthews were not recalled or permitted to transfer to either BRS or Adell subsequent to their layoffs. In 1986, Sogard hired 3 full-time employees and 1 part-time worker; BRS hired 2 new employees and received 2 transfers from Sogard and Adell; Adell added 3 part-time and 12 full-time employees, 3 of whom were recalled from layoff. Further, approximatley 1 week after the layoffs, a Sogard employee whom Thomas Sogard described as inept was permitted to transfer to BRS, proving not only that a position was available there but that an employee's deficiencies did not invariably affect his length of service with Respondent. As mentioned previously, Sogard laid off two additional employees in January 1986. One of them, Lucille Sogard, whom Respondent had hired as recently as November 1985 (and, therefore, had less seniority or experience than either Matthews or Lafrancois), was reemployed by Adell 2 months later in March.

Respondent's claim that Lafrancois and Matthews were targeted for layoff and were not recalled solely because of their substandard attendance records also does not pass muster. Sogard revealed that the Respondent treated its employees' personal problems leniently and with compassion. Punctilious attendance was not an absolute requirement for several employees who apparently had made special arrangements with the Respondent. Matthews testified without controversion that Bruce Sogard extended the same sympathetic understanding to her when she explained that her attendance problems were due to marital difficulties. Respondent also failed to controvert Matthews' testimony that she gave notice to the Company prior to any date on which she missed work, and that some of her absences were taken as vacation time. Moreover, on the 10 occasions on which Matthews had partial days off, 4 occurred prior to 10 August, the date on which she recieved a pay raise accompanied by a favorable evaluation of her abilities. Apparently her attendance record did not dismay Respondent when she was not engaged in union activity.

Lafrancois' records show that he was late on 12 occasions between May and August, yet, this did not prevent the Respondent from granting him a raise in September. After the wage increase, he was late to work on only six occasions. In other words, according to Respondent's defense, it grew more displeased with Lafrancois' attendance, as his record improved. Obviously, such a defense cannot prevail. Moreover, Lafrancois was assured that he was not rehired due to a lack of work. Yet, in the first 4 months of 1986, prior to Bruce Sogard's departure from the family businesses, Respondent hired a number of full- and part-time employees. Further, contrary to Respondent's denial, its Exhibit 5 proves that Sogard employees did transfer to BRS and Adell. Plainly, Respondents' antipathy to union sympathizers explains the failure to rehire Lafrancois and Matthews.

In sum, I conclude that Respondent's displeasure with Lafrancois' and Matthews' attendance record was magnified and exaggerated after Respondent became aware of their union activity. Even assuming that the Respondent did not know of their organizational efforts prior to 23 December, they certainly were aware of Lafrancois' and Matthews' activities after the new year. Given evidence of its antiunion bias, Respondent's excuses for failing to recall Lafrancois and Matthews when new and inexperienced employees were added to the payrolls are no more persuasive than are the reasons offered for their layoffs. If they were performing a variety of skilled tasks, they certainly were competent enough to fill less demanding jobs as well. See generally *A & T Mfg. Co.*, 280 NLRB 916 (1986). Based on the foregoing considerations, I conclude that Respondent had not shown that it would have laid off and failed to recall Connie Matthews and Dennis Lafrancois even in the absence of their union activity. It follows that Respondent's actions toward these employees violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent Sogard Tool Company and Adell Corporation are a single employer.

2. United Electrical, Radio and Machine Workers of America, Local 274 is a labor organization within the meaning of Section 2(5) of the Act.

3. By laying off Dennis Lafrancois and Connie Matthews on 23 December 1986 and failing to recall them thereafter because of their union organizing activities, the Respondent is engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

4. By characterizing the layofff of a union activist as a cure for cancer, the Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I find it necessary to propose an order

that requires the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies fo the Act, including posting the notice appended to this decision.

Specifically, having concluded that Respondent discriminated against Dennis Lafrancois and Connie Matthews by laying them off and failing to recall them because of their union activities, I shall recommend that Respondent offer them immediate and full reinstatement to their former positions and, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges and to make them whole for any loss of earnings and benefits suffered because of Respondent's discrimination against them, to be reduced by any interim earnings. Their loss of earnings shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1977), from the date of their layoffs on 23 December 1985 until such time as Respondent offers them reinstatement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

1. Cease and desist from

(a) Laying off or failing to recall its employees because they support or engage in activities on behalf of United Electrical, Radio and Machine Workers of America, Local 274, or any other labor organization.

(b) Making statements to its employees that coerce, restrain, or interfere with the experience of the rights guaranteed them by Section 7 of the Act.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Dennis Lafrancois and Connie Matthews immediate and full reinstatement to their former or substantially equivalent positions, removing any records of their layoffs that may appear in their personnel files, and make them whole for any loss of earnings they may have suffered by reason of their discriminatory layoffs in the manner set forth above in the remedy section of the decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at each of its Orange, Massachusetts facilities copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[13] If no exceptions are filed as provided by Sec. 102 46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"